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FAXED

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9 ATTORNEYS FOR CREDITOR TOM MASTERS

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In Re:
14 Daniel Joseph Shaw and Amber June McClain
15 Shaw.
16 Debtor.

CASE NO. 15-50656-SLJ
Chapter 7
Adversary Proceeding No.
COMPLAINT TO AVOID DISCHARGE

17 THOMAS P. MASTERS, individually, and as
18 Trustee of the Thomas P. Masters 1993 Trust,
19 Plaintiff,
20 v.
21 DANIEL J. SHAW
22 Defendant
23
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CASE NO. 15-50656-SLJ

-1-

COMPLAINT TO AVOID DISCHARGE

4824-7275-2162v2
FRU16950001

1 Plaintiff, Thomas P. Masters, individually and as Trustee of the Thomas P. Masters 1983 Trust
2 ("Plaintiff") files the following Complaint to determine dischargeability of the debt owed to Plaintiff
3 by Daniel J. Shaw ("Defendant").

- 4 1. Defendant is the debtor in bankruptcy case number 15-50656 -SLJ filed in the above
5 referenced court on February 27, 2015[Dkt. #1].
- 6 2. Plaintiff is a creditor of Defendant by virtue of, among other things, a judgment in his favor
7 against Defendant for the sum of \$262,500 pursuant to a stipulated settlement in the Santa
8 Clara County Superior Court Case No.1-08-CV-128350 (a true and correct copy of the
9 Stipulated Judgment and Order thereon is attached hereto as Exhibit A and incorporated
10 herein by this reference).
- 11 3. This is a core proceeding under 28 U.S.C. Sections 157(b) (2) (1) and 28 U.S.C. Section
12 157(b) (2) (J). The Court has jurisdiction under 28 U.S.C. Section 1334. Venue of this action
13 is proper under 28 U.S.C. Section 1409.

14 BACKGROUND FACTS

- 15 4. Defendant was the Designated Officer for RMRF Enterprises, Inc. dba Cupertino Capital, a
16 licensed real estate broker in the State of California.
- 17 5. Defendant was one of three shareholder owners of an entity known as Cabrillo Commons,
18 Inc., a California corporation formed by Defendant for the purpose of engaging in the
19 construction of a 43 unit new town-home project in Aptos, California known as "Cabrillo
20 Commons."
- 21 6. In the summer of 2007, Plaintiff was presented by Defendant with a summary offering
22 memorandum soliciting his participation as a lender in a \$1,200,000 loan to be made to
23 Cabrillo Commons. The offering memorandum was referred to by Defendant as a "Trust
24 Deed Investment Summary" and generally contained the relevant facts and representations
25 with respect to the offering.
- 26 7. The Trust Deed Investment Summary represented that "The funds being loaned in this note
27 will be kept by the borrower in a CD and used as collateral to put up a Letter of Credit to
28

1 secure performance to the County of Santa Cruz. Upon partial or full release of the Letter of
2 Credit, the Bank will release the CD and this loan will be paid back."

3 8. In reliance on the Trust Deed Investment Summary and other assurances made by Defendant
4 and on the long-standing relationship and the trust and confidence which Plaintiff reposed in
5 Defendant, on August 2, 2007, Plaintiff delivered Eight Hundred Thousand Dollars
6 (\$800,000) to Defendant to fund a substantial portion of the total loan amount (the "Cabrillo
7 Commons Investment").

8 9. Defendant was aware that it was Plaintiff's policy to limit the size of his participation in
9 Defendant's solicitations to substantially less than the amount of the Cabrillo Commons
10 investment.

11 10. Defendant assured Plaintiff that the he would solicit additional lenders to replace most of the
12 funds invested by Plaintiff in order to leave a loan balance of only Three Hundred Thousand
13 Dollars (\$300,000). Defendant failed to obtain such substitute financing; accordingly,
14 Plaintiff's investment remained at \$800,000.

15 11. Subsequent to making the Cabrillo Commons investment Plaintiff received from Defendant
16 various documents apparently intended to confirm Plaintiff's investment; however, the
17 documents did not accurately reflect the terms of the investment nor were they consistent
18 with the representations made in the Trust Deed Investment Summary. Although
19 uncomfortable with the documentation, Plaintiff nonetheless relied on his relationship with
20 Defendant and believed that Defendant would respect the terms and promises contained in
21 the Trust Deed Investment Summary and protect the disposition of the bank account funded
22 by the Cabrillo Commons investment.

23 12. In approximately December, 2007, Plaintiff became concerned regarding the status of a
24 number of outstanding investments he had with Defendant. Accordingly, Plaintiff prepared a
25 detailed list of outstanding loans in which he had invested through Defendant and discussed
26 those loans in a meeting with Defendant on December 18, 2007. Page 10 of the list prepared
27 by Plaintiff refers to the Cabrillo Commons investment and states in pertinent part:
28

1 "The [\$800,000] sum advanced was with the understanding it would be paid down to
2 \$300,000. No pay down has occurred as of 12/17/07. It would seem to me that there ought to be a
3 covenant that ANY release of the CD would go directly to the lenders, as this is the basis on which it
4 was sold"

5 13. Plaintiff ultimately demanded that Defendant memorialize the terms on which the Cabrillo
6 Commons investment as part of a settlement of issues involving a number of Plaintiff's
7 investments with Defendant. That settlement was memorialized in a written Settlement
8 Agreement; Section 3 of that Agreement provided that, with respect to the Cabrillo
9 Commons investment:

10 "Shaw acknowledges that Masters has no intention of extending or
11 renewing the term of Loan 1487 [the Cabrillo Common loan] (or any
12 other loans), and that the loan will be due and payable in accordance
13 with its terms on February 1, 2009. Shaw agrees that the payments
14 due on Loan 1487 shall be paid in a manner consistent with the
15 comments on the summary offering sheet for such loan that was
16 initially provided to Masters, a copy of which is attached hereto as
 Exhibit D (e.g. in pertinent part that "upon the partial or full release
 of the Letter of Credit, the Bank will release the CD – and [Loan
 1487] will be paid back"), effective upon the execution of this
 Agreement." (A true and correct copy of the Settlement Agreement is
 attached hereto marked Exhibit B and incorporated herein by this
 reference).

17 14. Following the execution of the Settlement Agreement, Plaintiff learned that, notwithstanding
18 the terms of the Trust Deed Investment Summary, the reaffirmation of those terms in the
19 Settlement Agreement, and his reliance on his fiduciary relationship with Defendant, at the
20 time of the negotiation and documentation of the Settlement Agreement, the Defendant had
21 already received permission from the County of Santa Cruz to reduce the Certificate of
22 Deposit and had already diverted significant sums from Plaintiff's investment in the
23 Certificate of Deposit for his own use and benefit or the use of projects with which he was
24 affiliated, including Cabrillo Commons, without repaying Plaintiff's investment as
25 represented and promised both in the Trust Deed Investment Summary and in the Settlement
26 Agreement.

27 15. Upon the consent of the County of Santa Cruz, in excess of \$500,000 was released from the
28 CD but was diverted by Defendant without notice to or consent from Plaintiff.

1 16. In March 2010 Plaintiff filed a First Amended Complaint against Defendant and others for
2 Fraud and Breach of Fiduciary Duty among other causes of action in the Santa Clara County
3 Superior Court. The matter was settled as to the other defendants and was subsequently set
4 for trial in October, 2010 as to the Defendant and set for a settlement conference the
5 preceding week. At the settlement conference a stipulated settlement was reached on terms
6 set forth in the Stipulated Judgment attached hereto as Exhibit A. Pursuant to the terms of
7 the settlement judgment was entered against Plaintiff in the amount of \$262,500. No portion
8 of that sum has been paid by Defendant. Pursuant to the terms of the settlement agreement
9 Defendant specifically agreed that the debt to Plaintiff would not be included in any
10 subsequent bankruptcy filing and that the debt would not be dischargeable in bankruptcy.

11 **FIRST CAUSE OF ACTION**

12 **[FRAUD]**

13 17. Plaintiff incorporates by reference each of the allegations set forth in Paragraphs 1 – 16
14 above as though fully set forth herein.

15 18. Defendant personally, as a principal of Cupertino Capital and as a principal of Cabrillo
16 Commons as part of a scheme and artifice to defraud, misrepresented to Plaintiff in the
17 negotiations leading up to the Settlement Agreement and in the Settlement Agreement itself,
18 the following material fact; that Shaw would repay Plaintiff with any of the funds released
19 from the certificate of deposit following a release of such funds by the County of Santa Cruz.
20 This representation was untrue as Shaw had no intention of performing pursuant to that
21 promise.

22 19. Plaintiff relied on Defendant's misrepresentation because Defendant was Plaintiff's
23 confidant and investment advisor in whom Plaintiff reposed trust and confidence.

24 20. The misrepresentations were material in that had Plaintiff known that Defendant had no
25 intention of honoring the promise (and in fact had removed the funds from the CD at the
26 very time that he was negotiating the Settlement Agreement) Plaintiff would not have
27 entered into the Settlement Agreement (an agreement which covered millions of dollars of
28 other investments Plaintiff then had with Defendant) and would have sought immediate

1 repayment of the Cabrillo Commons investment and the other investments covered by the
2 Settlement Agreement.

3 21. As a proximate result of Defendant's misrepresentation and of his conversion of Plaintiff's
4 investment, Plaintiff suffered financial damage.

5 22. The conduct of Defendant was intentional, willful and wanton and designed to defraud
6 Plaintiff amounting to oppression, fraud and malice warranting the award of punitive and
7 exemplary damage.

8 **CLAIM FOR RELIEF**

9 23. As a result of Defendant's actions, Plaintiff has been damaged in the amount of \$262,500 as
10 of October 20, 2010, the amount of the stipulated judgment.

11 24. Based on the foregoing conduct, Defendant's debt to Plaintiff is a debt for willful and
12 malicious injury by the debtor to another under Bankruptcy Code section 523(a) (6) and is
13 consequently nondischargeable thereunder.

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 1. A determination that Defendant's debt to Plaintiff, including interest accrued at the legal
16 rate, is nondischargeable;
17 2. For cost of suit incurred herein, and
18 3. For such other and further relief as the Court deems just and proper.

19 DATED: JUNE 3, 2015

BERLINER COHEN

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BY: /S/ FRANK R. UBHAUS
FRANK R. UBHAUS
ATTORNEYS FOR DEBTOR CREDITOR TOM
MASTERS

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CASE NO. 15-50656-SLJ

-6-

COMPLAINT TO AVOID DISCHARGE

4824-7275-2162v2
FRU16950001

EXHIBIT A

1 FRANK R. UBHAUS, CA STATE BAR NO. 46085
2 THOMAS D. MORELL, CA STATE BAR NO. 198403
3 MARCO M. CAMPAGNA, CA STATE BAR NO.: 246633
4 BERLINER COHEN
5 TEN ALMADEN BOULEVARD
6 ELEVENTH FLOOR
7 SAN JOSE, CALIFORNIA 95113-2233
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9 FACSIMILE: (408) 998-5388
10 frank.ubhaus@berliner.com
11 thomas.morell@berliner.com
12 marco.campagna@berliner.com

13 ATTORNEYS FOR PLAINTIFF
14 THOMAS P. MASTERS, INDIVIDUALLY, AND AS TRUSTEE
15 OF THE THOMAS P. MASTERS 1993 TRUST

16 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
17 UNLIMITED CIVIL JURISDICTION

18 THOMAS P. MASTERS, individually, and as
19 Trustee of the Thomas P. Masters 1993 Trust

20 Plaintiff,

21 v.

22 DANIEL J. SHAW, RMRF ENTERPRISES,
23 INC., a California corporation dba
24 CUPERTINO CAPITAL, CABRILLO
25 COMMONS, INC., a California corporation,
26 MICHAEL T. PARSONS, ANTHONY B.
27 BOWMAN, and DOES 1 through 50,
28 inclusive,

Defendants.

CASE NO. 1-08-CV-128350

STIPULATED JUDGMENT

IT IS HEREBY STIPULATED by and between plaintiff, Thomas P. Masters,
individually, and as Trustee of the Thomas P. Masters Trust, through his attorney, and defendant,
Daniel J. Shaw, individually, that:

1. On October 20, 2010 the above referenced case was settled pursuant to California
Civil Code Section 664.6 on the following terms as stipulated by plaintiff and defendant:

a. Defendant to pay plaintiff the sum of \$250,000 on or before October 20,
2011;

1 -b. If defendant made a \$15,000 payment on or before October 20, 2011 the
2 due date for the \$250,000 payment would be extended 12 months;

3 c. If defendant failed to make the \$15,000 payment on or before October 20,
4 2011 then the full \$250,000 plus interest at the rate of 5% per annum to and including October
5 20, 2011 would be immediately due and payable;

6 d. In the event that defendant filed for bankruptcy protection the obligation
7 to plaintiff would not be listed as an obligation in his bankruptcy schedules and the obligation
8 would not be dischargeable in bankruptcy;

9 e. The settlement agreement would be judicially enforceable under the
10 provisions of California Code of Civil Procedure Section 664.6.

11 2. Defendant failed to make the \$15,000 payment referred to in the settlement
12 agreement and there is now due and owing to plaintiff the sum of \$250,000 together with 5%
13 interest from October 20, 2010 through October 20, 2011 in the amount of \$12,500.

14 Judgment may be entered pursuant to the terms of the foregoing stipulation.

15
16 DATED:

5/3/13


ATTORNEY FOR PLAINTIFF

17
18
19 DATED:

4/24/2013


DEFENDANT

1 FRANK R. UBHAUS, CA STATE BAR NO. 46085
2 THOMAS D. MORELL, CA STATE BAR NO. 198403
3 MARCO M. CAMPAGNA, CA STATE BAR NO.: 246633
4 BERLINER COHEN
5 TEN ALMADEN BOULEVARD
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13 ATTORNEYS FOR PLAINTIFF
14 THOMAS P. MASTERS, INDIVIDUALLY, AND AS TRUSTEE
15 OF THE THOMAS P. MASTERS 1993 TRUST

16 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

17 UNLIMITED CIVIL JURISDICTION

18 THOMAS P. MASTERS, individually, and as
19 Trustee of the Thomas P. Masters 1993 Trust

20 Plaintiff,

21 v.

22 DANIEL J. SHAW, RMRF ENTERPRISES,
23 INC., a California corporation dba
24 CUPERTINO CAPITAL, CABRILLO
25 COMMONS, INC., a California corporation,
26 MICHAEL T. PARSONS, ANTHONY B.
27 BOWMAN, and DOES 1 through 50,
28 inclusive,

Defendants.

CASE NO. 1-08-CV-128350

ORDER

IT IS ORDERED that judgment be entered pursuant to the terms of the stipulated settlement between the parties, as follows:

1. \$262,500 payable to plaintiff;

2. The judgment entered pursuant to the parties stipulation shall accrue interest at the rate of 10% per annum from the date of October 20, 2011;

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(ENDORSED)
FILED

MAY 15 2013

Deputy Clerk
Court of Santa Clara County
San Jose, California
Clerk of Court
Deputy Clerk

1 3. Defendant's obligation to plaintiff pursuant to the terms of the stipulated
2 settlement agreement shall not be listed in defendant's bankruptcy schedules in the event
3 defendant files for bankruptcy protection.

4 *These terms/conditions are in conformity*

5 SO ORDERED: *With parties' stipulated*
6 *Judgment, submitted herewith.*

7 DATED: 5-10-13

8 *Carol Overton*
9 JUDGE OF THE SANTA CLARA COUNTY SUPERIOR COURT

10 Carol Overton
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EXHIBIT B

SETTLEMENT AND INDEMNIFICATION AGREEMENT

This Settlement and Indemnification Agreement (hereinafter "Agreement") is made among Thomas P. Masters, an individual, Thomas P. Masters, as trustee of the Thomas P. Masters 1993 Trust ("Masters Trust"), and Thomas P. Masters as the beneficiary of Sterling Trust Company Individual Retirement Account #031442 ("Masters IRA"), on the one hand, and RMRF Enterprises, Inc., a California corporation dba Cupertino Capital ("Cupertino Capital") Daniel J. Shaw, individually and as trustee of The Shaw 1993 Living Trust, dated 10/30/98 ("Shaw Trust"). Mr. Masters, Masters Trust, and Masters IRA are referred to from time to time herein collectively for convenience as "Masters." Cupertino Capital, Mr. Shaw, and the Shaw Trust are referred to from time to time herein collectively for convenience as "Shaw." Masters and Shaw are sometimes collectively referred to as the "Parties."

RECITALS

- A. Thomas P. Masters is an individual residing at 28225 Robinson Canyon Road, in Carmel, California.
- B. Masters Trust is a revocable family trust, for which Thomas P. Masters is the trustee.
- C. Masters IRA is an individual retirement account maintained by Sterling Trust Company, trustee, for the benefit of Thomas P. Masters.
- D. Daniel J. Shaw is an individual with offices at 15700 Winchester Blvd., Los Gatos, California.
- E. The Shaw Trust is a revocable family trust, for which Daniel J. Shaw and Amber June McClain Shaw are the sole trustees.
- G. RMRF Enterprises, Inc., is a California corporation doing business as Cupertino Capital with offices at 15700 Winchester Blvd., Los Gatos, California

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EXHIBIT F

H. Attached to this Agreement as Exhibit A is a schedule of outstanding loans that have been arranged by Cupertino Capital, and funded by Masters, or one or more of them (the "Loan Portfolio"). For convenience, the individual loans referred to on Exhibit A shall be referred to by the Cupertino Capital Loan Number set forth on Exhibit A.

I. Masters has taken the position that Shaw is obligated to indemnify Masters with respect to a variety of potential losses that Masters might suffer in connection with the Loan Portfolio.

J. Shaw has denied Masters' claims.

K. The purpose and intent of this Agreement is to clarify and set forth the agreement of Shaw and Masters with regard to the obligations of Shaw to Masters in connection with the Loan Portfolio.

L. The Parties concurrently intend to ratify and confirm any express written guarantees previously delivered by Shaw to Masters in connection with some of the loans in the Loan Portfolio.

COVENANTS

NOW, THEREFORE, to avoid the substantial expense and inconvenience of litigation and in consideration of the promises and agreements hereinafter set forth, IT IS HEREBY AGREED by and between the undersigned as follows:

I. Provision for Stipulated Judgment. Shaw agrees that Shaw shall pay Masters the full principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000) in respect of and owing on Loan 1098, plus any accrued interest thereon, on or before June 1, 2008. This obligation shall be memorialized and secured by a stipulated judgment against Shaw that is enforceable by its own terms in the Santa Clara County Superior Court, in the form attached hereto as Exhibit B. That judgment shall be in relation to the Complaint which will be in the form of the attached Exhibit C. Such complaint shall not be filed with the Court or disclosed to any third party in any manner on or before June 1, 2008.

2. Loan Indemnification.

- (a) Indemnification of Masters. Shaw shall indemnify, defend, protect, and hold harmless Masters (and any of Masters' constituent partners, beneficiaries, trustees, heirs, assigns, and agents, from all Indemnified Loan Losses (as defined below) on the Indemnified Loans (as defined below), including without limitation, reasonable attorneys' and consultants' fees and costs incurred in collecting such amounts from Shaw after demand therefor.
- (b) Definition of Indemnified Loans. As used herein, the term "Indemnified Loans" shall mean and refer to the following loans set forth on the attached Exhibit A: Loan 1055, Loan 1105, Loan 1202, Loan 1257, Loan 1357, Loan 1376, and Loan 1486.
- (c) Definition of Indemnified Loan Losses. As used herein, the term "Indemnified Loan Losses" shall mean and refer to any principal amounts due and owing to Masters under the Indemnified Loans, but shall not include unpaid interest due thereon. Shaw shall have no liability to Masters for such Indemnified Loan Losses, however, unless and until the claims for such Indemnified Loan Losses collectively aggregate to more than One Hundred Seventy Five Thousand Dollars (\$175,000.00) in principal amounts invested by Masters, in which event the amount of any Loan Losses in excess of One Hundred Seventy Five Thousand Dollars (\$175,000.00) in principal amounts invested by Masters shall be the obligation of Shaw.
- (d) Excluded Loans. As to the balance of the Loans set forth on Exhibit A, ("Excluded Loans"), Masters agrees that Shaw shall bear no liability therefor, except insofar as Shaw has previously expressly guaranteed such obligations, whereupon the guarantees shall be unaffected (e.g. Loan

1217) and shall be fully enforceable in accordance with their terms, irrespective of any separate indemnification provided for herein. Shaw hereby ratifies the obligations set forth in such guarantees.

- (e) This Agreement is solely intended to resolve Masters' claims against Shaw with regard to the Loan Portfolio, and shall have no effect with respect to any other rights, or with respect to any borrower, obligor, guarantor, or other obligee. All terms, covenants and conditions of the documents memorializing the Indemnified Loans and the Excluded Loans shall remain in full force and effect.

3. Loan 1487. Shaw acknowledges that Masters has no intention of extending or renewing the term of Loan 1487 (or any other loans), and that the loan will be due and payable in accordance with its terms on February 1, 2009. Shaw agrees that the payments due on Loan 1487 shall be paid in a manner consistent with the comments on the summary offering sheet for such loan that was initially provided to Masters, a copy of which is attached hereto as Exhibit D (e.g. in pertinent part that "upon the partial or full release of the Letter of Credit, the Bank will release the CD – and [Loan 1487] will be paid back"), effective upon the execution of this Agreement.

4. Information on Loan Portfolio. Shaw agrees that Cupertino Capital shall provide Masters a monthly summary of the Loan Portfolio consistent with the form submitted to Masters on February 28, 2008.

5. Confidentiality. The Parties agree that, except as provided in this Agreement, and provided that the party seeking the benefit of this provision is not in breach of this Agreement, they will not, without compulsion of legal process, disclose to others any Confidential Settlement Information (as defined below), save and except as is reasonably necessary to disclose them to governmental tax authorities, and appropriate professionals and advisors who are obligated, either in writing or professionally, to maintain such disclosures in confidence, such as the party's respective counsel and accountants, and provided that such disclosure is reasonably necessary to

effect the purpose for which such professionals and advisors are employed or consulted. All such persons to whom such disclosure is made are to be told that the information is confidential. Notwithstanding the foregoing provisions of this Section, should any litigation be commenced by or against any party to this Agreement, whether it be an action for damages, equitable or declaratory relief, relating to any facts or circumstances concerning the Loan Portfolio, or relating to any provision of this Agreement, the parties may make such use of and undertake such disclosures of the Confidential Settlement Information, and the facts and circumstances concerning the Loan Portfolio, this Agreement, and the terms thereof generally, as in good faith may be required to adequately prosecute or defend such litigation. As used in this Section 4, the term "Confidential Settlement Information" means the specific terms of this Agreement itself, together with the circumstances of the settlement negotiations leading thereto and the description of the underlying disputes which lead to the settlement process.

5. No Inducement. Each Party individually and collectively declares and represents that no promises, inducements, or other agreements not expressly contained herein have been made and that this Agreement contains the entire agreement between the Parties as to the resolution of the parties claims and obligations regarding the Indemnified Loans and the Excluded Loans, and that the terms of this Agreement are contractual and not recitals only.

6. Binding Effect. This Agreement shall inure to the benefit of each Party and/or benefit their predecessors, successors, subsidiaries, affiliates, representatives, assigns, agents, officers, directors, employees, and personal representatives, past, present and future.

7. Further Documents. To the extent any documents are required to be executed by any of the Parties to effectuate the terms of this Agreement, each Party hereto agrees to execute and deliver such other and further documents as may be required to carry out the terms of this Agreement.

8. Representation. Each Party represents and acknowledges that each of them has been represented by counsel as identified on the signature page of this Agreement with respect to this Agreement and any and all matters covered by or related to this Agreement. Each Party has

been fully advised with respect to all rights which are affected by this Agreement, with the exception of any tax implications. The Parties to this Agreement acknowledge and affirm that they have not been advised on any matters related to the impact of either Federal or State taxes relative to this Agreement and that each Party was advised to consult with independent tax counsel.

9. No Modification. This Agreement contains the entire agreement between the Parties and may not be altered, amended, or modified in any respect, except by a writing duly executed by the relevant Parties. All further prior agreements and understandings, oral agreements and writings are expressly suspended hereby and are of no further force or effect.

10. Headings, Number and Gender. Headings are used herein for convenience only and shall have no force or effect in the interpretation or construction of this Agreement. As used in this agreement, the singular shall include the plural and masculine, the feminine and neuter genders.

11. Payment of Attorney's Fee and Court Costs. Each Party shall be responsible for the payment of its own court costs, attorneys' fees, and all other expenses in connection with the negotiation of this Agreement. If a lawsuit is filed arising out of the enforcement of or a claimed breach of this Agreement, the prevailing party shall be entitled to their reasonable attorney's fees and costs.

12. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

13. Venue. Venue over any action over this Agreement shall be in the County of Santa Clara, State of California.

14. Joint Drafters. Counsel for each of the Parties have been involved in the drafting and negotiation of this Settlement Agreement. Thus, no rule of law that ambiguity in an Agreement will be construed against the drafter shall be applied in interpreting this Agreement.

The Parties below named have executed this Agreement as of the 30th day of April, 2008.

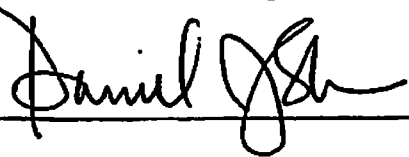
MASTERS:

THOMAS P. MASTERS, individually, and as trustee of the Masters 1993 Trust, and as the beneficiary of Sterling Trust Company Individual Retirement Account #031442




SHAW:

DANIEL J. SHAW, individually and as trustee of The Shaw 1993 Living Trust, dated 10/30/98



RMRF Enterprises, Inc., a California corporation, dba CUPERTINO CAPITAL

By: 
Its: President

READ AND APPROVED:

BERLINER COHEN

By: 

Frank R. Ubhaus, Esq.
Attorneys for Masters

MICHAEL T. PARSONS, ESQ.

By: 

Michael T. Parsons, Esq.
Attorney for Shaw

Masters Cupertino Capital Portfolio							Date Last Updated - 04/25/2008
Loan #	Total Loan	Investment 12/17/2007	Current 4/25/2008	Status	Borrower	Maturity	Comments / Status / Projection
Masters Family Partnership (6271)							
1093	n/a	380,000	0	n/a	Ganaza	n/a	Investment was bought out as of 2/11/08
1098	n/a	550,000	0	n/a	Cascade Investments	n/a	Tom directed C.C. to transfer this balance to his trust acct (6131)-effective 2/1/08
1434	n/a	325,000	0	n/a	Quail Meadows	n/a	Investment was bought out as of 2/1/08
Masters Family Trust (6131)							
967	n/a	75,000	0	n/a	Holiday Drive, LLC	n/a	Investment was bought out as of 1/14/08
982	650,000	200,000	200,000		Zamani	08/01/08	Loan paid current by BK Court order, 6/9/08 court hearing
1055	425,000	60,000	60,000		Touche Enterprises	n/a	Properties for sale (\$200k / \$200k / \$150k)
1061	n/a	200,000	0	n/a	Chavez	03/01/09	Investment bought out
1098	850,000	300,000	850,000	Performing	Cascade Investments	12/31/06	To be paid 6/1/08 per settlement agreement
1105	1,835,000	175,000	175,000	Accruing	Kell One (Owner)	07/01/07	Offer pending at \$1.95m, with 35% down and some seller financing, investor letter to be sent
1116	n/a	250,000	0	n/a	Deprice Properties	n/a	Investment was bought out as of 1/14/08
1125	1,850,000	250,000	250,000	Accruing	David McElabb	03/01/07	Offer pending at \$2.1m, involves trade with another home, investor letter to be sent
1175	350,000	350,000	350,000	Performing	Ronald Weiner	01/01/08	CC working on new investors
1183	n/a	237,982	0	n/a	Sunset Meadows	n/a	Investment bought out
1184	n/a	150,000	0	n/a	Cacchione	n/a	Paid Off on 4/23/08. All amounts due paid in full.
1188	600,000	300,000	300,000	Performing	David Piltzen	09/01/08	Property in contract to be sold
1202	640,000	150,000	150,000		Richard Ceraolo	03/01/08	Reviewing Offer from Borrower Investor Letter to be sent
1210	1,040,000	150,000	150,000	REO	DHP Grisham	03/01/07	COE by 4/30/08. Principal will be returned in full.
1217	925,000	150,000	150,000		ODH Partners	03/01/08	MCD filed in April 2008
1222	890,000	250,000	250,000		Fitzhenry	04/01/08	Motion for relief continued to 5/7/08; appraisals pending
1223	940,000	250,000	250,000		Fitzhenry	04/01/08	Motion for relief continued to 5/7/08; appraisals pending
1257	1,400,000	400,000	400,000		Richard Ceraolo	08/01/07	Foreclosure Sale has been delayed until May 9th. Lawsuit answer pending from Ceraolo counsel
1268	n/a	100,000	0	n/a	JJGS Corp.	n/a	Investment was bought out as of 2/12/08

1315	n/a	200,000	0	n/a	Red Horizons	n/a	Investment was bought out as of 12/5/08
1308	n/a	100,000	0	n/a	Longview Apartments	n/a	Investment was bought out as of 12/1/07
1424	n/a	150,000	0	n/a	Cusumano Homes	n/a	Paid Off on 1/2/08
1425	1,000,000	470,000	169,948	Matured	Longview Development	11/01/07	300K Paydown 2/8/08, Payoff Pending
1434	n/a	175,000	0	n/a	Cusumano Meadows	n/a	Investment was bought out as of 2/1/08
1435	630,000	250,000	0	n/a	AR Village Properties	n/a	Final buyout completed in April
1433	1,100,000	350,000	350,000	Performing	Larry Ruster	12/01/08	TPM requests buydown to 300K
1436	4,000,000	500,000	500,000	Performing	Ram Reson (RPR Building)	05/01/09	TPM requests buydown to 300K
1437	1,200,000	500,000	600,000	Performing	Cadmo Commons	07/01/09	
1438	4,000,000	700,000	328,000	Performing	Rumblin' Dragon Realty Inc.	08/01/10	
Tom Masters IRA (6013)							
259	0	600,000	0	n/a	Charcennay	n/a	Investment bought out
1113	875,500	65,000	65,000	Performing	David Chan (Madro Investments)	07/01/07	Junior bondholder brought current and started foreclosure process
1156	1,000,000	105,000	0	n/a	La Plaza Mini Mart	n/a	Investment bought out
1251A	1,000,000	245,000	245,000	Performing	San Marcos Villas	09/01/08	Two recent closings, no units in contract. Bonus not paid as all projects are going to first lender
1261	70,000	70,000	70,000	Performing	Go! Tran & Julie Plam	12/01/09	
1293	500,000	225,000	225,000	Performing	PASR Investments	10/01/08	TPM requests buyout
1308	250,000	50,000	50,000	Performing	John Kieran Hyatt	01/01/09	
1357	300,000	300,000	300,000	LATE	Donald C. Phipps	05/01/09	
1376	2,000,000	300,000	300,000	LATE	Red Hawk Community Partners	07/01/09	1st loan has interest reserve for another 5 mos. or so
1424	n/a	100,000	0	n/a	Cusumano Homes	n/a	Paid Off on 12/08
1425	1,000,000	120,000	119,893	Matured	Longview Development	11/07/07	Payoff Pending
1451	400,000	70,000	70,000	Performing	Gusapio Kessa	08/01/08	
TOTALS		11,075,962	7,135,742				

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11 ATTORNEYS FOR PLAINTIFFS
12 THOMAS P. MASTERS, ET AL

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

14 UNLIMITED JURISDICTION

15 THOMAS P. MASTERS, an individual,
16 THOMAS P. MASTERS, trustee of the
17 THOMAS P. MASTERS 1993 TRUST, and
18 THOMAS P. MASTERS, beneficiary of
19 STERLING TRUST COMPANY
20 INDIVIDUAL RETIREMENT ACCOUNT
21 #031442,

22 Plaintiffs,

23 v.

24 DANIEL J. SHAW, an individual, CASCADE
25 INVESTMENTS, LLC, a California Limited
26 Liability Company, RMRP ENTERPRISES,
27 INC., a California corporation dba
28 CUPERTINO CAPITAL, DANIEL J. SHAW
as trustee of THE SHAW 1993 LIVING
TRUST, and DOES 1-20, inclusive,

Defendants.

CASE NO. _____

STIPULATION FOR ENTRY OF
JUDGMENT AND ORDER

DANIEL J. SHAW, individually, and as Managing Agent for CASCADE
INVESTMENTS, LLC and RMRP ENTERPRISES, INC., a California Corporation dba
CUPERTINO CAPITAL, and as trustee of THE SHAW 1993 LIVING TRUST (collectively,
"DEFENDANTS") stipulates that judgment may be entered against DEFENDANTS in the above
matter in favor of Plaintiffs THOMAS P. MASTERS, THOMAS P. MASTERS, trustee of the
THOMAS P. MASTERS 1993 TRUST, and THOMAS P. MASTERS, beneficiary of
STERLING TRUST COMPANY INDIVIDUAL RETIREMENT ACCOUNT #031442 in the

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STIPULATION FOR ENTRY OF JUDGMENT AND ORDER